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ROYAL COMMISSION
INQUIRY INTO LABOUR DISPUTES

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HEARINGS HELD AT
WINDSOR

VOL. NO.

DATE

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March 29, 1967

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IN THE MATTER OF The Public
Inquiries Act, R.S.O. 1960,
Chapter 323

- and -

IN THE MATTER OF an Inquiry
into Labour Disputes

BEFORE: The Honourable Ivan C.
Rand, Commissioner, at
the Essex County Court-
house, Windsor, Ontario,
on Wednesday, March 29th, 1967.

E. Marshall Pollock

Counsel to the Commission

APPEARANCES:

Windsor and District Labour Council

Mr. Cuthbert Andrews

President

" Leon MacPherson

Charles J. Clark, Q.C.,

Counsel for the Windsor
Chamber of Commerce.



Windsor, Ontario,
Wednesday, March 29,
1967.

--- At 10:10 A.M., the hearing commenced.

MR. POLLOCK: We have the Windsor Chamber of Commerce. I recognize Mr. Clark and now Mr. Leon MacPherson and Mr. Cuthbert Andrews who is President of the Windsor Chamber of Commerce.

I take it that you, Mr. Clark, are the spokesman?

MR. CLARK: I am, Mr. Pollock.

MR. POLLOCK: We have both read the brief and we are impressed by its brevity, and some of the points you raised in it. So we leave the matter of presentation to yourself, whether you want to read the brief and/or deal with the points.

MR. CLARK: Mr. Commissioner and Mr. Pollock, I would like to follow the latter suggestion. I do not think it is necessary to read it.

I think it stresses three areas, 1, it is in close support of the brief of the Board of Directors of the Ontario Chamber and the Windsor Board stands firm in the matter of interim injunctions. The last point is one of a general nature but it is that we have concern for the public interest. That, perhaps, is the strongest area of concern to this chamber.

I think it fair to say that in a community such as this, quite apart from what we think of in terms of essential industry like transportation companies, and utilities, where you have a large employer and there is an extended strike situation, it affects the whole



1 community and the public is concerned with this.

2 So the Chamber is, without being specific,
3 urging that if there are recommendations for legislative
4 change, that the public interest must be safeguarded.

5 THE COMMISSIONER: How would you define more
6 specifically the elements of public interest?

7 MR. CLARK: Well, I think this is very diffi-
8 cult, Mr. Commissioner. Certainly we could start with
9 utilities but where you draw the line -- where you get by
10 this from a public utility into the area of private in-
11 dustry where still the public is concerned -- I am afraid
12 you can't draw the line.

13 THE COMMISSIONER: It is generalized as you say.
14 The public is interested in every means of production of
15 goods and that is what seems to be lacking, but how far
16 would you go in the interests of that? What are the fac-
17 tors in strike action which directly clash with public
18 interest, such as order?

19 MR. CLARK: Well, I think this is a matter of
20 grave concern, where there is disorder and disrespect for
21 the law, for this is bound to have its effect on the whole
22 community.

23 Something must be done so that in strike situ-
24 ations there is obedience to the law, otherwise you have
25 a community where the whole order of things breaks down.
26 You will recall, I am sure, back in the thirties when we
27 had a troublesome situation here, where strike action
28 took place and the streets were blocked and the strikers
29 interfered with private automobiles and property and so
30 forth. This is the sort of thing which we believe must



1 be stopped.

2 Now, I have heard it suggested that perhaps we
3 should prohibit picketing and likewise we should, in some
4 way, tie the hands of the employer during the period of
5 this dispute.

6 THE COMMISSIONER: What is your opinion?

7 MR. CLARK: My own view is, and it would be a
8 personal one, that you have to make some exceptions first,
9 for example there may be third parties affected and while
10 I don't think this is a major aspect, you do have situ-
11 ations where an employer may be supplying power to some
12 one else, or water. I think we must protect that.

13 I would, personally, and I express this as a
14 personal view, if we have that situation where we prohibit
15 striking and the normal operations of the employer can
16 carry on for a period, that would be effective, but not
17 for too long a period in my own judgment. Then, perhaps,
18 possibly following that period a compulsory arbitration.

19 THE COMMISSIONER: Why do you think it would
20 not be long?

21 MR. CLARK: Well, in my experience I think you
22 have both Labour unions and employers opposed to compul-
23 sory arbitration, opposed to arbitration with respect to
24 the terms of an agreement. They are both opposed to it.

25 Now it seems to me that they fear that you are
26 going to have an outside party come in and impose upon
27 them a settlement, so if you have a period of thirty days
28 or sixty days this will, or should, contribute to bar-
29 gaining, because we have that situation happening today.

30 You will find that the larger employers in



1 this city, when you get to conciliation board stage, the
2 Labour unions certainly say the Conciliation Board will
3 be of no use to us. They don't want any outside party
4 and would sit down to effective bargaining.

5 THE COMMISSIONER: It is a fact that under
6 conciliation a great many controversies that reach that
7 stage have ended there, our statistics show that.

8 MR. CLARK: Certainly, I am all in favour of
9 the conciliation proceeding. I wouldn't want to see it
10 taken away, but what has happened with a few large employ-
11 ers is that they think the Conciliation Board is a thing
12 of the past.

13 The unions want to get the employer into a
14 strike position and to get themselves into a strike position
15 at the earliest time to exert pressure on the employer.

16 MR. POLLOCK: And the employer wants to get
17 them in a strike position at the end of a model year,
18 when there would be little pressure on them.

19 MR. CLARK: That is right, and if you follow
20 that through and if this is so it is a disaster. If you
21 put them in the position where the employee cannot strike
22 and the employer doesn't operate for a period, it may con-
23 tribute to more effective bargaining.

24 THE COMMISSIONER: It may end in the acceptance
25 of an arbitrary award, that has happened in this city.

26 MR. CLARK: That is right.

27 THE COMMISSIONER: So there is a limit to the
28 exercise of what they call their economic powers? One is
29 losing wages and the other is losing profit.

30 MR. CLARK: They are not the only loser.



1 THE COMMISSIONER: The public has an interest
2 and the public interest has been disregarded or overlooked
3 too long, but what I wanted your view on was the tendency
4 if, for instance, these two features would show up more
5 prominently than any other -- the picket line and the em-
6 ployment of men who are ordinarily strike breakers --
7 whether they could be dealt with to eliminate some of
8 certainly the disagreeable consequences of a strike, and
9 at the same time leave these antagonists, if that is what
10 they desire to call themselves, to fight in nakedness so
11 they will have to rely on their own strength, whatever it
12 may be.

13 As a matter of fact this is present in the case
14 of large scale industry, large scale industry has to
15 close.

16 MR. CLARK: They do not operate.

17 THE COMMISSIONER: There is no occasion, there-
18 fore, for any picket line. The object has been accom-
19 plished, the cessation of work has stopped the work. So
20 it is in the smaller industries that any serious question
21 can arise.

22 Suppose you had in addition to these things,
23 a highly responsible tribunal that could modify conditions
24 where there was obviously an inequality; where you had the
25 justice on one side but no economic strength, and in the
26 discretionary margin an adjustment of the inequality might
27 be given.

28 MR. CLARK: Are we thinking, sir, after the
29 expiration of the collective agreement? We believe the
30 two sides have attempted to bargain but not effectively,



1 and they can't get together, that you impose this sort of
2 thing. Someone who could move into the picture at that
3 stage and really effect an agreement, is that the subject
4 we would be talking about?

5 THE COMMISSIONER: He would not be effecting
6 the agreement but modifying the conditions that would ul-
7 timately tend to be coercive on the parties, indirectly on
8 them, to arrive at a settlement.

9 You must remember even today there is undergoing
10 in this country a hearing on compulsory arbitration, which
11 has been selected by the union as against the efforts of
12 conciliation. That is present today in the railway case
13 and in a number of unions. So I think the trouble is we
14 allow some of these words to have an abnormal and unnec-
15 essary weight in our judgment. If you go to some other
16 countries you won't find them being terrified by the word
17 "compulsory" at all.

18 MR. CLARK: No.

19 THE COMMISSIONER: They have been acclimated
20 to it and they look upon it as objective and that is all.
21 You cannot compel men to work and that is one thing we
22 have to agree to. Then the only thing the community can
23 do is to say, "If you refuse to abide by the verdict of
24 the community you cannot claim the benefits the community
25 gave." In that way you can adjust the conduct of the in-
26 dividuals, where that conduct is related to the generosity
27 or the sense of justice to the community.

28 MR. CLARK: Do you leave the employer in the
29 meantime?

30 THE COMMISSIONER: In the first place, you have



1 to recognize we are considering this on the basis of
2 private enterprise. So far as it exists today there is
3 no strict private enterprise in any sense of the word.
4 The money we are paying in this country for the assistance
5 to enterprise is enormous, so the government is interested,
6 not only the public, and we have to recognize that our
7 attitudes in a community, our social attitudes including
8 economic attitudes have undergone a transformance. There
9 is no question about that. But we have not worked out a
10 philosophy which gives rational justification for chang-
11 ing attitudes, and one question immediately arises and
12 that is what do you think is the relation of a workman to
13 his place of employment?

14 MR. CLARK: Well, his relation at the present
15 moment, up until the present time, has simply been the
16 place where he could perform his work or services for
17 compensation, and it is doubtful that he has been con-
18 sidered as part of the plant or the employer in any re-
19 spect.

20 THE COMMISSIONER: That is so, and out of what
21 social or other condition did that necessarily arise? Go
22 back two or three centuries and you get the source of it,
23 or beyond that, because it was the individual who with
24 his enterprise and initiative started this, or it might
25 have been his inheritance.

26 MR. CLARK: Can we go to the other side of it?
27 I am sure you have had the experience where incentive
28 programmes have been offered to employees and you have
29 had the trade union movement generally opposed to such
30 plans. Surely with an incentive arrangement for employees



1 who stand to gain by a greater interest in a field of en-
2 deavour that this is good, but you find the trade union
3 movement opposed to it.

4 THE COMMISSIONER: Even in Russia they had to
5 abandon the sense of equalization and they are now award-
6 ing a man according to his employment. They have a plan
7 and I have forgotten the name but it is in existence today,
8 but that is not exactly what I am seeking. I want a phil-
9 osophical basis which will give today the true sense of
10 what society is demanding in relations between the employer
11 and employee.

12 MR. CLARK: I will defer to Mr. MacPherson on
13 that.

14 THE COMMISSIONER: There is no doubt what you
15 describe is the source of the 19th century and it was
16 present there because it was the individual enterprise.
17 We are no longer in the days of individual enterprise.
18 We are private enterprise fundamentally and it consists
19 in the management for the good of many, which is the staff,
20 not the individual.

21 MR. MACPHERSON: With the mass production ef-
22 forts and automation and I must confess I am not that
23 close to it, but we are sometimes gathering the impression
24 the employers have not been able to encourage the employ-
25 ees in that climate. There is something missing.

26 THE COMMISSIONER: Take yourself with twenty
27 or thirty years in a key industry. How do you look upon
28 the doors you have entered for that many years? How do
29 you look upon the activities? How do you look upon the
30 company when you see somebody in your place?



1 MR. MacPHERSON: I would be pretty upset if I
2 saw someone taking my place after twenty-five or thirty
3 years.

4 THE COMMISSIONER: I think we all would.

5 MR. MacPHERSON: Exactly.

6 THE COMMISSIONER: Today we are changing our
7 attitudes because of the changing society, our population,
8 the virtual monopolization of functions, the increase in
9 technology which enables a man almost to control the whole
10 operation of Ontario Hydro Electric. With the skill he
11 possesses it might result in one-man control, so what
12 would happen if he says, "I won't give my services because
13 I am unjustly dealt with."

14 MR. MacPHERSON: What you are saying is we have
15 a real marriage between the workers who perform the ser-
16 vices and management who may be limited to small numbers.

17 THE COMMISSIONER: And when you supplement that
18 by the educational processes we are paying hundreds of
19 millions of dollars for, you will see why it has become
20 necessary that people are being introduced to new ideas.
21 I don't want to monopolize this conversation.

22 MR. POLLOCK: I think Mr. MacPherson is very
23 happy.

24 THE COMMISSIONER: Mr. MacPherson will have
25 any time he asks for. I am suggesting these things to you,
26 not as matters that are settled. We certainly are chang-
27 ing in our outlook of society. Here you have the govern-
28 ment -- some governments build a factory almost, equip it
29 with machines and then are placing people in to run it,
30 for what purpose? To give employment. We settled on a



1 policy of full employment. That is a tremendous multipli-
2 cation of our whole outlook and attitude. Where are you
3 going to reconcile that with the past and with the present
4 legislation that we have?

5 MR. CLARK: Only by recognizing the employees
6 as part of this enterprise. There is no question about
7 that now, but then you must bring in some outside -- not
8 force -- but outside influence as you have suggested, sir,
9 and it can be on either side where there are unreasonable
10 positions taken.

11 THE COMMISSIONER: I don't think there is any
12 doubt about that. We have to submit to the judgment of
13 others in other relations in life.

14 MR. CLARK: I would like to come to the business
15 of appointing someone and who that person might be or
16 whom they might be, in order to perform that function, and
17 lead up to the -- that leads us into the area of arbi-
18 tration and the chairmanship of conciliation boards today.

19 I have a feeling that in Ontario the County
20 Court Bench should be extended, that their jurisdiction
21 should be enlarged to include this very thing. My own
22 view is that judges who are engaged in many other cases
23 and who also do this labour work are much better for it,
24 than if a person sat on Labour Relations matters alone.

25 I feel the jurisdiction could be enlarged to
26 take care of this and I can give you -- there has been an
27 argument that judges should not be sitting on arbitration
28 boards and conciliation boards because one party is not
29 satisfied with the result, and it brings the judge into
30 disrepute and so forth. I don't agree with that at all.



1 I had a situation where I am satisfied I was
2 entitled to an interim injunction on an ex parte basis.
3 The judge did not grant it, but he got in touch with the
4 union people as a result of which they took steps to per-
5 mit the entry into the plant, to do the thing we wanted to
6 do to protect the property. I disagree with the judge. I
7 think he should have given the injunction, but it does in-
8 dicate to me where a man in authority, a judge, where he
9 speaks to people they will take some direction and accept
10 a decision he makes.

11 THE COMMISSIONER: I would accept that, but
12 not a judge in the ordinary sense of the word, because it
13 depends upon really the qualification of the man himself,
14 and in other places that very intimate relation you
15 mention is being exercised today.

16 MR. CLARK: Yes, well I think it would be a
17 big problem in the appointment of a man.

18 THE COMMISSIONER: I agree with that.

19 MR. CLARK: To perform this function and handle
20 these matters. We must have people who are accepted by
21 all of the parties concerned, but the appointment would
22 give me some trouble as well.

23 Well-qualified people could come from the ranks
24 of trade unions or from the ranks of employers and serve
25 in this capacity, but I don't just believe -- maybe I am
26 naive about this -- but once put in the position the
27 people involved, the interested parties, would accept
28 them.

29 THE COMMISSIONER: This is interesting. In the
30 experience in some of the states in Australia, not all,



1 but certain men who have gone up through the ranks of
2 labour are preferred by the employers, to those who have
3 been placed because they came out of employer relations.

4 MR. CLARK: Preferred for what reason?

5 THE COMMISSIONER: For their objectivity of
6 judgment and for his virtues. So there is a certain
7 coerciveness in office. If you have a proper conception
8 of the responsibilities then it is bound to develop within
9 the individual a detachment from personal views, or things
10 of that sort, that might influence his judgment.

11 MR. CLARK: Would you not think they should be
12 on the level of judges?

13 THE COMMISSIONER: I agree with that. That is
14 exactly the standard of many of the officers in Australia.
15 They must be qualified to attend in the Supreme Court.

16 MR. CLARK: I am not suggesting lawyers and
17 judges.

18 THE COMMISSIONER: I didn't suggest at all that
19 you can have a lopsided education. They must have a well-
20 rounded education. They must be specially trained. The
21 arbitrator is a peculiar man, he is not bound by one point
22 of view or perspective. It is to enlarge that to three
23 hundred and sixty degrees as against forty-five degrees
24 which is the problem of education.

25 MR. CLARK: Would the appointments be made by
26 the Ontario Government?

27 THE COMMISSIONER: In speculation, yes, they
28 would be, but they could be given good advice by different
29 organizations on both sides. You can size up a man fairly
30 well. This is only a speculative matter, but I would like



1 to get the views on this thinking about these matters. I
2 do not know anything more important in our whole society
3 than this question arising out of economic relations as
4 well as social relations.

5 MR. POLLOCK: If we can go back and pick up a
6 hanging question. The question was, "At what stage would
7 this type of tribunal go into operation?" I tread on
8 dangerous ground in trying to interpret what I think the
9 matter is. If you could say that at a given stage, at the
10 level that you speak or spoke earlier, where you have
11 negotiated and failed to reach an agreement and everybody
12 is at the strike stage, then one party who is obviously
13 economically weak or he would prefer to go on strike and
14 weather the storm, would apply to the tribunal to say for
15 example the other party hasn't bargained in good faith, if
16 we can ever find out what that means; or justice is on
17 his side but economics aren't. The tribunal might perhaps
18 have power to modify the position. That was suggested
19 this morning with no strike breakers and no pickets.

20 There may be a modification saying you can
21 bring in people to supplement your work force if the union
22 is unreasonable, and not dealing fairly; or the other situ-
23 ation would be if the company is unfair the union may have
24 some advantage to try and balance off this very difficult
25 equation. That, I think, answers your question. Maybe
26 with that information you can answer the Commissioner's
27 question.

28 MR. CLARK: It would be available on appli-
29 cation to either party at a stage when they were at an
30 impasse, and we would be, during this period, in a no



1 strike position. In a no lock out and no strike position.

2 MR. POLLOCK: You can't be at that stage at the
3 strike stage. If you want to make your application you
4 may have to do it fairly rapidly while the strike is going
5 on. It should not be able to be used as delaying tactics
6 for one side or the other.

7 THE COMMISSIONER: There would be admission to
8 a tribunal of that sort at any time. In fact, in certain
9 states of Australia they have what seems to me at the
10 moment a very valuable means of meeting the troubles at
11 the outset. You take the Commissioner under that system.
12 The Commissioner is a well equipped man, he is a man of
13 ability and judgment, and his intimate relations with both
14 the employer and employee is part of the strength of that
15 relation. His days are interesting in some cases, in
16 some states rather, the Commissioner is given say a dozen
17 industries which are specially allocated to him and he
18 becomes very familiar with the whole operations of these
19 and he will necessarily develop sound judgment about ques-
20 tions that arise in dispute and that sort of thing.

21 His relation is such the moment any difficulty
22 of that sort arises he can then call it in question. He
23 can go to the plant, if necessary, and he can see that the
24 small annoyances which may accumulate into a serious con-
25 flict are scrunched at the outset. That is the type of
26 man I had in view, and the type of tribunal. It will call
27 for men of first-class quality.

28 MR. CLARK: We would be talking then in two
29 areas that these people would be available and one is dur-
30 ing the term of agreement.



1 THE COMMISSIONER: As well as when the normal
2 steps have been taken without satisfactory results.

3 MR. CLARK: Would this be opening up collective
4 agreements during the term?

5 THE COMMISSIONER: Not necessarily at all except
6 for this. You see, in a collective agreement it is made
7 on the general assumption of the existing conditions, with
8 the possible anticipation in the near future of minor
9 changes, but when you change that fundamental condition
10 under which the negotiation was proceeded with, where you
11 change something radically which modifies the conditions
12 in the industry, you are really departing from the assumed
13 basis of the first agreement, and that is a subject that
14 remains to be worked out, but I think you have to recog-
15 nize at the beginning as changing the foundation of the
16 agreement which is the assumption of both parties of the
17 existing conditions of work.

18 Now, you take the ordinary agreement, you see
19 that every day in law.

20 MR. CLARK: I don't know how Mr. MacPherson
21 would feel, but when you mention a person who can have as
22 many as ten, twelve and thirteen industries and become
23 well acquainted with them and would really serve to re-
24 solve the disputes from time to time during the collective
25 agreement, but at the stage of bargaining for renewal I
26 am a little concerned about that without thinking about it
27 more and without knowing.

28 THE COMMISSIONER: I agree.

29 MR. CLARK: Because you almost impose upon in-
30 dustry an individual.



1 THE COMMISSIONER: You do.

2 MR. CLARK: My own view would be one individual
3 ought not to be assigned to thirteen industries. I could
4 go along with this Board on application to it, but someone
5 is delegated to do the job.

6 THE COMMISSIONER: The complaint on both sides
7 is the man doesn't appreciate all the unforeseeables of the
8 relations in that industry.

9 MR. CLARK: That is one of the things we find
10 when they say to the conciliation board, you can't help us
11 conciliation board, you don't know what it is all about.

12 MR. MacPHERSON: It is not to take one man?
13 It is not left to the control of one person but a panel
14 and from that panel to select the person qualified to deal.

15 THE COMMISSIONER: I am assuming you have four
16 or five or half a dozen commissioners, and each is dele-
17 gated to certain industries, but in the course of their
18 discussion in joint session they change views, as you do
19 in the ordinary courts. One man has devoted most of his
20 life to one branch of law but the principles of say, in-
21 terpretation, the attitude, the fundamental assumptions
22 that are made there are the same for the whole field al-
23 most, and it is an easy transition from the twelve sub-
24 jects to one hundred subjects.

25 MR. CLARK: Would we contemplate a person serv-
26 ing in this capacity for example, during the term of the
27 collective agreement where there is a problem on appli-
28 cation by either party, would go immediately to the scene
29 and attempt to resolve it, but failing a solution it would
30 go to the panel?



1 THE COMMISSIONER: You could get the whole
2 panel to sit on it.

3 MR. MacPHERSON: This would be a great help in
4 minor matters.

5 THE COMMISSIONER: Oh, yes, these are minor.

6 MR. MacPHERSON: It seems the difficulty in
7 leaving the control to one man is giving a little too much
8 authority.

9 THE COMMISSIONER: There is no doubt that has
10 been thought by thousands of workmen and certainly hundreds
11 of employers for years.

12 MR. CLARK: You say it works in Australia?

13 THE COMMISSIONER: They accept it, and as far
14 as I can see they won't change it.

15 MR. MacPHERSON: If I may say a word in con-
16 nection with so-called compulsory arbitration, it seems
17 to me that has become a bugaboo. It has really not the
18 significance normally attributed to those frightening re-
19 sults that would come from someone imposing his will on
20 another, because as you indicated earlier we are all sub-
21 ject to that. We live by the law and are supposed to. I
22 see nothing wrong with it and as long as I am associated
23 with matters relating to labour management problems the
24 more I am getting to the point, personally, of feeling that
25 some type, some concept of arbitration is the answer.

26 I am a little fearful of this conciliation pro-
27 cess being the be-all and end-all of the matter. The
28 people say it is a matter of economic strength and they
29 are testing each other economically. The construction in-
30 dustry doesn't provide a security of economic strength one



1 would perhaps see in a factory.

2 In an industry people are on a seniority list.
3 They normally have no other job to which they can go if
4 the plant shuts down. In construction the work force is
5 a floating work force, as recognized by such things as
6 unemployment insurance, vacation with pay and the method
7 of handling the stamps.

8 THE COMMISSIONER: By the way, may I interrupt
9 you just a moment? What is the record of it respecting
10 unemployment insurance, where a strike has gone on and
11 has been in existence for some time?

12 MR. MacPHERSON: As you are probably aware
13 there are three stages with two stages of appeal. There
14 is the original ruling made normally and then the appeal.
15 By the time they get to --

16 THE COMMISSIONER: I mean --

17 MR. MacPHERSON: In the unemployment insurance
18 the consequence of an application for unemployment insur-
19 ance during a strike I would not be prepared to say. There
20 is no hard and fast rule. I think these things are judged
21 on their merits.

22 THE COMMISSIONER: Discretionary?

23 MR. MacPHERSON: I think it is discretionary.
24 By the time it gets through to the final umpire you might
25 have reversed the original decision.

26 MR. POLLOCK: There is a rule of thumb or
27 regulation, or whatever, I understand which exists, and
28 it is depending on whether or not the company is back to
29 production, I think to eighty-five percent of its original
30 production.



1 MR. MacPHERSON: I don't know, Mr. Pollock, but
2 in the area of the construction field there is an entirely
3 different type of employment than in the seniority setup
4 in a plant. Consequently, a few pickets at a strike stage
5 can stop entirely an employer's revenue producing oper-
6 ation, while the remainder of the work force moves over to
7 another employer or even to another community and continues
8 to work without any real adverse effect. Perhaps there
9 should be some type of balancing in the construction in-
10 dustry as an example of the so-called test of economic
11 strength.

12 The other feature Mr. Clark mentioned I think
13 is the underlying concern of the Chamber of Commerce --
14 and I am perhaps speaking out of turn as speaking for the
15 Chamber because I am only a member, and Mr. Clark and Mr.
16 Andrews are the officers, but I feel --

17 MR. POLLOCK: It is a democracy.

18 MR. MacPHERSON: I usually say what I think,
19 Mr. Pollock, wherever it leads me. The Chamber of Commerce
20 must, if it is going to serve a useful function in a com-
21 munity, be representative of all the community and not
22 simply for a part. It should not simply represent business
23 and big business, it should be a community organization
24 and this is the basis upon which we have come here today.
25 We are trying to be of any assistance we can to you. We
26 are expressing the community views and not the views of
27 management, and when we say we think interim injunctions
28 should be continued, we think a full understanding of how
29 an ex parte injunction is obtained, how an interim in-
30 junction is continued and perhaps how a permanent



1 injunction is obtained, that a full understanding of that
2 should be had by those who raise their voices in outcry
3 and say this is a dreadful thing.

4 I think there is a lack of education and it
5 would be interesting to know how many occasions have arisen
6 where the outcry took place and where the unions who do
7 the outcrying were fully aware of what was going on. I
8 think particularly that Peterborough's situation which was
9 a dreadful exhibition did. There the solicitor for the
10 union was fully aware of what was going on. There was no
11 mystery about it and yet we have people in high places,
12 highly placed in labour circles, who said, "Defy the law,
13 the law is bad, therefore defy it." We do not think that
14 is the answer, we think if the law is bad law, change the
15 legislation and convince them to change the law, but not
16 by force.

17 When you move into a sphere of an interim in-
18 junction let them find out what it is and what is an ex
19 parte injunction? I would like to discuss it with any one
20 of them. If, as an employer, I am trying to protect my
21 property, my person and my family from damage or from in-
22 jury, shouldn't I have the protection of the court? I
23 think I am entitled to that and I do not think mob violence
24 should rule this. I do not think disorder or weight of
25 numbers should determine whether an issue is right or wrong.
26 Why a complaint if the number of pickets are limited, as
27 long as the message is being put across that is intended?
28 I hope that to be the purpose of picketing.

29 MR. POLLOCK: On that point it is a question of
30 whether the message is to be whispered or broadcast, as I



1 understand the position on picketing. If you say it is
2 communication of information you have to go one step fur-
3 ther and say communication of support for this union, so
4 people do not get the mistaken impression that only two or
5 three are supporting it, the union leaders, and the people
6 aren't supporting it at all.

7 MR. MacPHERSON: I think, Mr. Pollock, in this
8 age most people are able to read and if the pickets are
9 carrying signs saying that all the personnel of this plant,
10 all the members of Local X or whatever it happens to be
11 supported the action of these pickets, or signs stating
12 the company is unfair and doing so and so, surely it gets
13 the message across.

14 I don't want to be interfered with walking
15 down the street as you and I were in the newspaper strike.
16 Why should I be jostled when I am in the lawful pursuit
17 of my business?

18 MR. POLLOCK: You are the member of the public
19 or someone going in?

20 MR. MacPHERSON: I am just going by the build-
21 ing there on the sidewalk on which these people are shov-
22 ing people accidentally, of course. No one would suggest
23 they are doing it deliberately but why should I be jostled?

24 MR. POLLOCK: Were they obstructing?

25 MR. MacPHERSON: This was one minor incident
26 of what I thought is improper picketing. There must be
27 other areas where salutary measures could be taken to
28 avoid the really vicious type conflict that sometimes
29 develops between an employer and a work force.

30 I think people should be getting very close



1 now if they are becoming enlightened -- and we are not
2 retrogressing instead of progressing -- we should be get-
3 ting to the point where some reason should be used to dis-
4 cuss matters, instead of brickbats or shooting holes in
5 milk trucks. It seems odd that we are going backwards.

6 MR. POLLOCK: The argument of jostling people
7 on the sidewalk wouldn't pertain to a plant in an indus-
8 trial location where the public never ever goes.

9 MR. MacPHERSON: An industrial location? I
10 don't know what you mean by that.

11 MR. POLLOCK: As opposed to where the newspapers
12 are located in Toronto.

13 MR. MacPHERSON: Do you know where the Ford
14 Motor Company is? It is on both sides of Riverside Drive.
15 As Mr. Clark mentioned earlier in 1944 or 1945, it is so
16 long ago I have forgotten, we had a situation where people
17 took cars --

18 MR. POLLOCK: That clearly falls in your first
19 case. I can --

20 MR. MacPHERSON: But that is an industrial
21 area.

22 MR. POLLOCK: Let me modify it by an adjective,
23 an isolated industrial area. Where in an isolated indus-
24 trial area is that factor? What you find revolting is
25 the fact people walking down the sidewalk on lawful oc-
26 casions are jostled by other people or interfered with
27 because that is a criminal offence in any event.

28 MR. MacPHERSON: People are interfered with by
29 their property taken or damage.

30 MR. POLLOCK: That is a criminal offence



1 whether the persons are on strike or not on strike.

2 MR. MacPHERSON: I know, Mr. Pollock, but if
3 there was a limit on the situation before it got started,
4 if there was some method, and this is what the Commissioner
5 may have as an ultimate goal, let us try and stop the of-
6 fences before they get started. If we can, let us get
7 legislative procedure but a procedure in any event by which
8 all these difficulties can be resolved, through either a
9 negotiated method or if you can't settle it that way,
10 through an arbitrated method. Isn't this a lot better
11 than having a demonstration by force?

12 MR. POLLOCK: There is no question about that,
13 it is a question of can you do that?

14 MR. MacPHERSON: Let us go one step further.
15 In fact, a situation arose ten or twenty years ago when
16 if you were driving your car down Riverside Drive the car
17 was stopped. You were asked to get out and the car was
18 then put into a jam. Who are you going to prosecute? Do
19 you know the name of the gentleman who took you out of
20 your car? I don't think you would. You would have a dif-
21 ficult time finding out who you were going to lay the
22 charge against.

23 The next step, when are unions as such going to
24 accept the responsibilities commensurate with the rights
25 which they assert they should have? They assert rights
26 they wish to have in the negotiation of a contract. The
27 Labour Relations Act makes some pretence of responsibility
28 but not full responsibility. This again is something we
29 advocate through the brief you already have from the Ont-
30 ario Chamber, that there be a full acceptance by unions of



1 their responsibility, knowing they have the strength which
2 they obviously have.

3 They should accept this responsibility which
4 you have and I have and any other legal entity has, in re-
5 lationship one to another and to the public at large. This
6 is the crux of a great many of our problems. If we could
7 get this resolved that they have a full appreciation of
8 this responsibility then we needn't worry too much about
9 criminal prosecution in the hands of the employer. Some
10 one will tell you the Labour Relations Act says you can
11 prosecute me if I do such and such. Doesn't this make for
12 a nice happy family and a nice future for our relationship,
13 as employer and employee. The employee can say you have
14 prosecuted me through the criminal court under the Labour
15 Relations Act and this doesn't help. It should be washed
16 out.

17 MR. POLLOCK: Wash out all prosecutions under
18 the Labour Relations Act?

19 MR. MacPHERSON: Not private prosecutions.

20 MR. POLLOCK: You want somebody else to be the
21 monkey's paw?

22 MR. MacPHERSON: No, but I shouldn't be as an
23 employer the monkey's paw. It should be the Queen and
24 charge in the Criminal Court is on the information of so
25 and so and the Queen is saying something about you and me.

26 MR. POLLOCK: It is on the information of an
27 individual who has reason to believe what he is charging.

28 MR. MacPHERSON: That is fine, but the prosecu-
29 tor is the Queen in our jurisdiction, and yet under the
30 Labour Relations Act neither the Crown, the Attorney-



1 General's office, or any other law enforcement officer
2 will take part in that prosecution. This is left to a
3 private prosecutioner and Your Lordship has far more know-
4 ledge of this philosophy than I. I am appalled by the
5 term "Private prosecution". I never quite understood it.

6 THE COMMISSIONER: I think, though, you must
7 admit this. The basic principle of our common law was we
8 had to rely upon the whole mass of the population to bring
9 to the notice of the courts objectionable criminal actions,
10 as distinguished say from the French system; the system in
11 France where you have a prosecutor who will determine
12 whether proceedings will be initiated. Our idea is that
13 any member of the public can institute the proceedings
14 that may lead to conviction of violations of our laws.

15 MR. MacPHERSON: This is all very well, but --

16 THE COMMISSIONER: What you have in mind is
17 that we look to the employer to take the steps and he is
18 in danger of worsening relations with all his men in the
19 future.

20 MR. CLARK: I think it is a very real danger
21 and one I encountered in a set of circumstances. I asked
22 the Attorney-General at the time, some four or five years
23 ago, if he would instruct the Crown Attorney to continue
24 with the prosecution. He was horrified with the notion
25 and we took it on, as so-called private prosecution and a
26 conviction was granted against a ranking officer of one of
27 the unions.

28 THE COMMISSIONER: They do not hesitate to do
29 that in England.

30 MR. CLARK: The Crown people?



1 THE COMMISSIONER: No, the individual.

2 MR. CLARK: To me it is very distasteful and I
3 don't like it. I think if there is a prosecution it should
4 be done in the normal procedure by the legal Crown.

5 The next step was the appeal from that con-
6 viction, so then I suggested to the local Crown Attorney
7 he take on the matter of the appeal. He said, "No, this
8 is your baby, you keep going with it." After considering
9 the possible implications of this we would go through an
10 application for a trial de novo to the county judge and,
11 having in mind the financial backing for this gentleman,
12 an appeal to the Court of Appeal assuming it would end
13 there, it would still mean two more hearings. I had to
14 ask my employer, "If you want to really burn this chap
15 and be mean and miserable you will have to spend one thou-
16 sand dollars and we will hang onto it." Is this sensible?
17 I think it is absolutely ridiculous. That is one area I
18 meant to comment on on the prosecution aspect.

19 MR. POLLOCK: Are you with prosecution still?
20 A few years back, I think thirty years which is some con-
21 siderable time, this is hearsay, but there was an attitude
22 that prevailed at least in some provinces, with the very
23 strict enforcement of the watching and besetting section
24 of the Criminal Code, much to the apparent dissatisfaction
25 of the employers. They kept saying to these people, "Lay
26 off, it is a labour dispute." It is not for me to stop
27 prosecuting these people it was the Crown doing it.

28 MR. MacPHERSON: I know, but you skipped one
29 step. You are already at the Crown doing the whole job.

30 MR. POLLOCK: That is right, they lay the



1 action and they do everything.

2 MR. MacPHERSON: I am not at all adverse to the
3 concept of the employer or his representative giving the
4 facts, or even signing the information. It is the matter
5 of following through the confrontation in the courtroom
6 head to head, because it looks as though I am pursuing
7 you down the line.

8 MR. POLLOCK: The fact that the information
9 comes from the company, and obviously the evidence is
10 going to have to come from the informant, he is going to
11 have to step in that box and testify against his people.
12 The damage is done. The only thing you say by having the
13 Crown do it is you save the cost of hiring a solicitor and
14 counsel at this step. That is a different question.

15 MR. MacPHERSON: Perhaps one more fee. The
16 situation I encountered I asked, "Are we going to pursue,
17 pursue, pursue this man?" How far do you go? And then
18 after you have a dissenting judgment in the Court of Ap-
19 peal do you go on to the Supreme Court of Canada? It
20 looks like you are pursuing.

21 MR. POLLOCK: You are pursuing because you want
22 to keep appealing.

23 MR. MacPHERSON: I see Mr. Hoffa is doing that.
24 Whether I am obtaining your agreement or your disagreement
25 I am expressing my view, and not that of the Chamber of
26 Commerce, I think it is quite wrong the Labour Relations
27 Act should put the onus on the employer to follow through
28 all the prosecutions. I think if there are any prose-
29 cutions they should be dealt with in the same manner as
30 any evidence of any other suits.



1 THE COMMISSIONER: Unless you have an officer
2 of the Labour Tribunal or Labour Board, go along as part
3 of his duty so he could act independently of both parties.

4 MR. MacPHERSON: That would perhaps be a better
5 solution.

6 MR. POLLOCK: Let me draw another parallel. I
7 don't want to appear to argue with you and if I am it is
8 in the antithesis sense to verify the thought. I am not
9 saying your thought isn't pure. If we can draw a parallel
10 to the situation where most of the private complaints are
11 lodged under the Criminal Code, you would probably find
12 the false pretences and bad cheque instances being used
13 most often, which is normal. What happens is the infor-
14 mant swears the information that such and such gave a bad
15 cheque.

16 MR. MacPHERSON: I don't know what the percen-
17 tages are.

18 MR. POLLOCK: In the interim period of time
19 the fellow comes along and pays the cheque, and the in-
20 formant wants to quash the action at the time. Then
21 usually the information is withdrawn and the magistrate
22 sometimes makes a speech and says, "You are using the
23 courts for a collection agency and we will charge you
24 twenty-five dollars costs."

25 In these circumstances where you have an em-
26 ployer bringing his action against the employee for an
27 offence, he is the one that has all the facts. He is
28 the one on the job and he has to testify. He is incur-
29 ring all the wrath of the individual and only saving the
30 expense. His employer-employee relations are not going



1 to be any better because he is no longer the informant
2 and if you are no longer counsel.

3 MR. CLARK: Let us take it to conclusion.
4 As far as you are concerned we should eliminate it al-
5 together.

6 MR. POLLOCK: I can see where employers
7 have taken a hard line and perhaps incurred a little
8 wrath on the part of the employees after they have a
9 considerable length of industrial peace because the
10 employees know this is the agreement. But when the
11 wrath is incurred they will say we won't try to enter
12 into a settlement, we will withdraw.

13 MR. CLARK: I am for suggesting to the
14 then Attorney-General to say, "If you think this is a
15 good law and you put it on your books you enforce it.
16 If you don't think it is one you should enforce, bring
17 in a bill at the next session and take it out."

18 MR. POLLOCK: The Labour Relations Act?

19 MR. CLARK: Take out the sections on
20 prosecution.

21 MR. POLLOCK: They are saying we will
22 not enforce it unless you feel it is important. You
23 are the employer you proceed.

24 MR. MacPHERSON: I don't think this is
25 a proper approach at all. If you are going to create a
26 quasi criminal offence -- in fact a criminal offence be-
27 cause of the nature of the proceedings -- you should
28 finally go ahead and enforce it. If you don't want to
29 enforce it take away the implication of the offence, at
30 least be forthright about it. I don't want to take up



1 too much time, Mr. Commissioner, I shouldn't have
2 interfered.

3 THE COMMISSIONER: I appreciate your
4 expression of views, Mr. MacPherson, that is what we
5 are looking for. Men who have experience and what they
6 think about possible changes.

7 MR. MacPHERSON: There were some areas
8 you mentioned to Mr. Clark about the type of person in
9 the judicial capacity and we have had -- I personally
10 have had -- some very fine experience with men who came
11 up through the organizational aspect of the Steelworkers
12 and Teamsters, sitting as chairman of arbitration boards
13 and as conciliation people, and what you said earlier
14 has great merit. First of all having the capability
15 and secondly having gone through a sound period of
16 training I think this is a very fruitful source for
17 people of this kind.

18 THE COMMISSIONER: I don't think there
19 is any doubt about it. As you say, they have the capa-
20 city for the job.

21 MR. MacPHERSON: We have heard something
22 about this matter about strike breaking. Perhaps I
23 have not been too close to that but I am somewhat baf-
24 fled by the representation that injunctions lead to
25 engagement of people who go in and do strike breaking.

26 THE COMMISSIONER: All that was meant
27 was the injunction opens the door.

28 MR. MacPHERSON: I can assure you as a
29 practical man in this community no one would be fool-
30 hardy enough to set out on such a course.



1 What we recognize and I hope in the pos-
2 ition I have got, in my relationship with resident of-
3 ficers of the unions, the locals, I try to recognize
4 this isn't a one-way street. There are rights on both
5 sides. I only become upset and perhaps more annoyed
6 than I should when I find an unreasoning approach, when
7 somebody says, "This has got to be it. There is no
8 other way to go." This is a hard line and there is no
9 versatility with this.

10 MR. POLLOCK: You wouldn't quarrel in
11 this community, if what you represent is the case, you
12 wouldn't quarrel with a condition of the injunction
13 that no outside strike breakers be engaged during the
14 currency of the injunction?

15 MR. MacPHERSON: The only thing is this
16 is a rather sweeping statement to make, because first
17 of all there are some areas in which the strike should
18 not be allowed and at the moment they are as Mr. Clark
19 has pointed out.

20 MR. POLLOCK: Let us talk about clearly
21 those disputes in the private sector.

22 MR. MacPHERSON: As long as we get into
23 that I can say that your first premise was a little
24 different approach for me. In a private quarrel be-
25 tween (a) the employer and (b) a local union, nothing
26 would please me more than to have this simply a head
27 on problem. They fight it out and each one has exactly
28 the same responsibilities and exactly the same rights,
29 and if the union can't work neither should the employer,
30 and very soon you will find a settlement, but if you



1 have a situation of an employer continuing his operation
2 or the employees keeping him shut down and they can get
3 work elsewhere, you don't have the equality.

4 THE COMMISSIONER: That is exactly the
5 line I was inviting.

6 MR. MacPHERSON: Thank you for your in-
7 dulgence.

8 MR. POLLOCK: On the premise we would
9 get into the public interest area, I want to ask one
10 question about that. There are two aspects of the
11 public interest, the physical aspect in which the pub-
12 lic is concerned, the violence the people on the side-
13 walk with the interference with the general public,
14 which occurs in every dispute, and I think you would
15 have to accept there is some inconvenience every facet
16 of the public experiences in every strike, the shortage
17 of goods. A minor inconvenience I might say jocularly.

18 MR. MacPHERSON: A strike in the commun-
19 ications medium, a newspaper strike.

20 MR. POLLOCK: That might get more of the
21 public interest.

22 MR. MacPHERSON: A radio station strike
23 where a news dissemination is interfered with. This
24 might be any type of interference.

25 MR. POLLOCK: That is of a different
26 nature. That more properly falls in public interest,
27 depending on the type of service. I want to ask this
28 question. Do you make the distinction on public inter-
29 est on the nature of the services, or on the employer?
30 I can conceive of a lot of public institutions that are



1 run, or a lot of enterprises run as public institutions,
2 which neither the municipality, government or provincial
3 government or federal government, be they wholly-owned
4 Crown corporations, which in some areas are considered
5 to be public interest matters. There are others which
6 on the other hand, the service is performed by a private
7 contractor. A garbage collector in some jurisdictions
8 is paid by the city and in other cities it is by indi-
9 vidual contract.

10 MR. MacPHERSON: If garbage collection
11 it should be in the excluded area.

12 MR. POLLOCK: You would agree it is the
13 nature of the services that is the controlling factor
14 as to public interest, as we do have two national
15 shareholders, one is government-owned and the other
16 privately, and assuming they compete, if there was a
17 strike in the government there wouldn't be any dis-
18 tinction whether it was government or privately-owned
19 in your consideration?

20 MR. MacPHERSON: The government-owned
21 railway or airline, as compared to C.P.A., I think
22 presents an entirely different type. This doesn't
23 strike me the same at all as what you might say was
24 the government subsidized industry. As the Commissioner
25 indicated earlier there is so much public money being
26 funnelled into various sources of business. The I.D.B.
27 and the O.D.B.

28 MR. POLLOCK: It is not only the money
29 but the protective operations that exist to keep them
30 in business.



1 MR. MacPHERSON: To what extent you are
2 going to say they are subsidized, I don't know.

3 MR. POLLOCK: If you have to trace the
4 pocketbook, the pay cheque to the source of income, you
5 could say a great number of things are public interest
6 and some things are not. If the public interest is
7 affected by a rail strike are they affected in the same
8 way by a strike of Canadian Pacific Airlines?

9 MR. MacPHERSON: I perhaps lost you on
10 the second turn with the airlines. I agree and go back
11 to the same acknowledgment I made earlier. It is the
12 type or nature of the operation not the individual em-
13 ployer. In these things I am directly concerned and
14 affected by such things, as public utilities.

15 We had a situation develop not too long
16 ago in connection with the local gas company, which is
17 a quasi public utility, not publicly owned but a utility
18 on which many of us depend. It is that type of thing,
19 anything that interferes with the way we live goes right
20 back to the public interest and I think this is public
21 interest.

22 THE COMMISSIONER: There is no doubt
23 about that at all. You can strangle the life of our
24 country by a strike of the railways.

25 You raised a question in the construction
26 industry and employers and unions are in agreement.
27 They both agree this is a different industry than any-
28 thing else. One of the difficulties the unions complain
29 about is it is difficult for them to get into a certi-
30 fication position with the time delay.



1 MR. MacPHERSON: I have been involved
2 with the local construction association now directly
3 for the last nineteen years, and I think the majority
4 of employers in the construction field are members of
5 the association.

6 MR. POLLOCK: Probably true but there is
7 a minority. We had an example yesterday where a sub-
8 contractor under contract to the general contractor was
9 engaging a union not a member of the local Building and
10 Trades Council. A union coming from Hamilton and a
11 union which was of non A.F.L. or C.L.C. affiliation.

12 MR. MacPHERSON: Just a moment, this is
13 getting into a philosophy I don't want to debate. We
14 could take days. One quick answer to that is, if a
15 union is a union within the meaning of the Labour Re-
16 lations Act and the Ontario Labour Relations Board has
17 granted it a certificate it is a union whether it is
18 ABC or XYZ.

19 MR. POLLOCK: Fine, let us modify the
20 example to avoid that. Let us make it a non-union
21 group and the rest of the people on the job and the
22 union go on strike, and the court looks at that and
23 says, "Well, do you represent this employer?" This
24 employer is the plasterer who brought in the non-union
25 men. The union will say no. The court will ask, "Have
26 you been certified by him?" The union will say, "No".
27 The court will say, "You have to get certified to have
28 a legal strike. You must be certified."

29 The picketing is no good. And the com-
30 plaints by the carpenters is that when they go on the



1 job the carpentry work might last two or three weeks
2 and by the time the floating work force goes to work
3 for employer X and makes the application for certifi-
4 cation the job is over.

5 MR. MacPHERSON: I think this cuts both
6 ways. There are many certificates granted with respect
7 to unions in the construction field, where they in ef-
8 fect hold the certificates over the head of the employ-
9 ers and use it as a weapon to make sure the employer
10 asks for them. I think it cuts both ways.

11 MR. POLLOCK: You probably then will
12 agree there is some room for modification?

13 MR. MacPherson: I think there is room
14 for improvement. For example you might say this,
15 rather than have the union or employer to declare a
16 job an entire union job, so you avoid the jurisdictional
17 quarrel or non-union quarrel, let somebody else decide
18 whether it is union or non-union job and get off the
19 problem.

20 THE COMMISSIONER: There is no doubt it
21 is a difficult subject to deal with.

22 Mr. Clark, you have something more to
23 say. I was going to give you ten minutes for a breather.

24 ---Short recess.

25
26 MR. CLARK: There are just two or three
27 things I would like to mention and some are just an en-
28 largement of what Mr. MacPherson had to say. There is
29 an area that concerns smaller employers and the Chamber
30 is made up of a lot of little people.



1 You may have the situation of a general
2 contractor who is not unionized in a community and he
3 takes on a contract, bids on it and he may base his
4 bid on that. But the subcontractors are unionized and
5 if he brings them in all of a sudden the roof falls in.
6 He is presented with a contract and he is obliged to
7 sign it to get the job completed.

8 This is an area I believe under the Ont-
9 ario Labour Relations Act which is not sufficiently
10 covered. The remedy section I draw it to your attention
11 because I think there are a number of employers and
12 their employees who are in a position they do not want
13 unions at all. However, if he employs a subcontractor
14 who is unionized the conditions have changed and the
15 smaller general contractor in these circumstances may
16 have underbid on a job and may be working on a job
17 where he is losing a considerable amount of money.
18 That is one area.

19 I listened to the discussion with respect
20 to the public interest and related to the nature of
21 the industry. I rather look at it in a larger aspect.
22 Take this city, take one large employer and I don't
23 care in what they are engaged, if that strike goes on
24 long enough almost every segment of this city's economy
25 is affected, and that is the public. So in my judgment
26 this is where the public interest is involved.

27 The public has an interest, the little
28 storekeeper on the corner, the hotel keeper, any number
29 of them. The public does have some interest in situations
30 like this being avoided because they are affecting



1 everybody in the community.

2 In respect to interim injunctions I have
3 a feeling people refer to them with a wide brush. I
4 agree with Mr. MacPherson that they are not understood.
5 In my experience in this city in seeking injunctions --
6 true, ex parte without notice to the other side --
7 they have been continued and in most cases on consent
8 of union counsel, because the purpose for which they
9 were sought was to keep the power house going so there
10 would be heat in the plant and the pipes would not
11 freeze and this sort of thing.

12 I am afraid this aspect of interim in-
13 junctions is being overlooked and we want that part
14 preserved and it should be preserved.

15 Now, with respect to the right to be
16 sued we think the unions should be in the same position
17 as the employers and the union resources being avail-
18 able to an employer for the sake of getting at these
19 resources. We think it would affect a greater discipline
20 upon the union membership if you make the purse of
21 the union available to employers who have a good cause
22 of action. Then I think you will find you will have
23 a greater discipline. Most of the membership of the
24 union say they are not exposed to suits today. You
25 don't have this.

26 We run into situations where heads of
27 trade unions say, "We can't control them, we tried."
28 They have remedies within their own constitution, and
29 in these days where seniority is important in a union
30 shop, if a member is not going to behave and conduct



1 himself properly and is expelled from the union he can't
2 continue his work with the employer. This is the aspect
3 I think is important because unions will not let them-
4 selves get into a position if their purse is effected.
5 I rather think it is a deterrent rather than the benefit
6 of any money recovered from the unions.

7 MR. POLLOCK: Do you think you would run
8 into the same difficulty by suing the union as the family
9 relations difficulty raised by Mr. MacPherson earlier?

10 MR. CLARK: I don't think it has the
11 same taint as a criminal prosecution.

12 MR. POLLOCK: Even though the criminal
13 prosecution might be limited to fines?

14 MR. CLARK: Right. I don't think it is
15 the same and I think it is one of Mr. MacPherson's
16 points and I think a good one, I don't think it contri-
17 butes to future relationship to have the employer pros-
18 ecuting an employee for a criminal offence.

19 MR. POLLOCK: You can prosecute a union.

20 MR. CLARK: I know.

21 MR. POLLOCK: You can take an effective
22 action against the union you know. That is the abhor-
23 rent feature Mr. MacPherson raises. It is a man taking
24 action against his own people. If you sue them do you
25 think there is a difference?

26 MR. CLARK: I think there is.

27 MR. MacPHERSON: You sue the union.

28 MR. POLLOCK: You can prosecute under
29 the Labour Relations Act.

30 MR. CLARK: It is a great deal more



1 difficult than prosecuting individuals.

2 MR. POLLOCK: In both cases you can sue
3 individuals. Now if an individual throws a stone through
4 your window and damages it or burns your plant--

5 MR. MacPHERSON: If you can identify him.

6 MR. POLLOCK: You have to identify him
7 to make the union liable. In the Ford case you would
8 have to identify the union with the activities of those
9 who commandeered the cars. Do you think the union
10 leaders and the union as an entity would counsel and
11 support the stealing of cars, or commandeering of cars
12 for this purpose? Obviously it was done by individual
13 people.

14 MR. MacPHERSON: No, no. I think this
15 is the area where you have to get the union to show it
16 did not. Put it the other way round, they must show
17 they did everything they could to discourage this.

18 MR. POLLOCK: To take positive steps to
19 avoid liability?

20 THE COMMISSIONER: Gentlemen, we are
21 very much obliged to both of you this morning.

22 MR. POLLOCK: I think Mr. Clark had some
23 other material. I think you are submitting it to us
24 in written form rather than an oral presentation, is
25 that correct?

26 MR. CLARK: Yes, I have to return to my
27 office. I could bring it back this afternoon or you
28 may wish to conclude and I could mail it.

29 MR. POLLOCK: We are a captive audience
30 until 5:30 or so.



1 MR. CLARK: Then would it be convenient
2 if I returned at 2:00 o'clock and file it with you? If
3 you have any questions we will be glad to answer.

4 THE COMMISSIONER: Fine, then we will
5 adjourn until 2:00 o'clock.

6 MR. POLLOCK: Unless Mr. Andrews has
7 anything to add.

8 MR. ANDREWS: After hearing the discussion
9 of my learned friends I will let them do the talking.

10 MR. MacPHERSON: I wonder, Mr. Pollock,
11 do you suppose any of the individuals who are here
12 would want to say anything?

13 THE COMMISSIONER: Any person who would
14 like to make a statement of any kind may do so here.

15 MR. POLLOCK: I take it by the silence
16 there is not anybody.

17 THE COMMISSIONER: Then we will adjourn
18 until 2:00 o'clock this afternoon.

19 ---At 11:50 A.M., the hearing adjourned to resume at
20 2:00 P.M.

21
22 ---At 2:00 P.M. the hearing resumed.

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24 THE COMMISSIONER: Mr. Clark?

25 MR. CLARK: Mr. Commissioner, Mr. Pollock,
26 I have Mr. Clarence Marintette of the Canadian Rock Salt
27 Company Limited and I have prepared the submission as
28 a result of some discussions in Toronto, at the time of
29 the presentation of the Ontario brief, and I merely pro-
30 pose to file it and make it part of your record. It is



1 factual and I am not presenting any argument at all. If
2 it should happen you require something further then I
3 will be available on your call. I will make it avail-
4 able to you in four copies.

5 THE COMMISSIONER: That is plenty, thank
6 you.

7 MR. POLLOCK: We need five.

8 MR. CLARK: There you are. I have the
9 original for Xerox copies. We have five sets of briefs.

10 MR. POLLOCK: Well, if there is nobody
11 else, if you are not going to make any comment I am
12 sure we don't have enough time to read a brief and ask
13 any intelligent questions, so I think if there is no
14 one else here who wants to make any submissions to
15 the Commission in the City of Windsor, I think we can
16 adjourn the sitting.

17 THE COMMISSIONER: Is there any person
18 who would care to make a statement of any sort?

19 MR. POLLOCK: There is no answer.

20 THE COMMISSIONER: Then we will adjourn
21 this sine die. Mr. Clark, thank you.

22 ---At 2:05 P.M., the hearing adjourned.
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